

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3830 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

B N PATHAN

Appearance:

MR HARDIK C RAWAL for Petitioner

MR AY PATHAN for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/10/1999

ORAL JUDGEMENT

Mr.Raval is appearing for the petitioner
Corporation and Mr.Pathan is appearing for the respondent
workman.

The facts of the present case in short are that
the respondent was working as a Driver with the

petitioner Corporation. In the course of his duty as such, the respondent remained absent unauthorisedly from 1.1.1980 to 15.4.1980. Regular Departmental Inquiry was initiated against the respondent workman and in the course of the Departmental Inquiry it was found that the respondent had not produced any medical certificate nor had he submitted any leave report for the period of his absence. No cause was shown by the respondent as to why the punishment proposed against him should not be imposed against him. Therefore, his services were dismissed vide order dated 28.5.1980. The said order of dismissal was challenged by the respondent workman before the Labour Court, Nadiad by filing Reference No. 392 of 1983. The Labour Court, after considering the evidence on record came to the conclusion that the impugned order of punishment for remaining absent for the period as aforesaid is harsh and unjustified and therefore the Labour Court directed the petitioner Corporation to reinstate the workman in service with continuity and also directed to pay 50% of the backwages for the intervening period under its impugned award dated 27.12.1989. The petitioner Corporation has challenged the said award by filing the present petition under Article 227 of the Constitution of India.

This Court while admitting this petition has granted interim relief qua back wages alone and no stay was granted against the reinstatement of the workman. The petitioner Corporation has produced past record of the workman vide Annexure B Page 15 to 20. I have heard Learned advocate Shri Raval for the petitioner Corporation. Mr.Raval has submitted that the Labour Court has not given any reason in support of its finding that the impugned order of punishment is harsh and unjustified. The misconduct was found to be proved before the Labour Court and the past record of the respondent workman was also produced before the Labour Court but the Labour Court has failed to consider the same. The Labour Court has also failed to appreciate that even the respondent workman has also admitted the legality and validity of the departmental inquiry initiated against him. He has submitted that the Labour Court has erred in directing the petitioner Corporation to reinstate the workman with 50% of backwages. He has submitted that the Labour Court is not justified to grant 50% of the back wages for the intervening period in view of the misconduct proved against the workman.

I have considered the submissions made by Mr.Raval. I have also considered the papers produced before this Court. The Labour Court has considered the

gravity of misconduct for remaining absent and has come to the conclusion that looking to the nature of misconduct, the punishment of dismissal is harsh and unjustified. Though, the past record of the workman was produced before the Labour Court vide Exh.14, from the bare reading of the impugned award, it does not appear that the Labour Court has considered the past record of the workman. From the record produced before the Labour Court, it appears that in all 15 defaults were committed by the respondent workman in past of which item.no.2 and 14 relate to absenteeism and in respect of item no.15, the present one, the respondent was dismissed from service on 28.5.1980.

Law has been settled on this score that normally in case of absence for certain days, punishment of dismissal is considered to be harsh and justified by the Hon'ble Apex Court as per the decision reported in AIR 1994, SC 215 and 1999 SCC Lab & Service Page 666 but before passing the award in either way, it is the duty of the Labour Court to consider as to whether the delinquent is entitled to reinstatement with backwages or not and if yes, to which extent he is entitled for the backwages. In the present case, the Labour Court has failed to consider this material aspect of the matter. Bare reading of the entire award would reflect that there would be no consideration on this point. Therefore, looking to the past record as also the period of absence from 1.1.1980 to 15.4.1980, I am of the opinion that the Labour Court is not justified in awarding even 50% of the backwages for the intervening period. The Labour Court has erred in awarding back wages to the workman. The Labour Court has erred in not considering the past record of the workman while passing the impugned award. Therefore, I am of the opinion that in the facts and circumstances of the case, the impugned award passed by the Labour Court is required to be modified by setting aside the direction for payment of back wages. To that extent, the impugned award is required to be modified by this Court.

In the above premises, this petition is partly allowed. The direction of the Labour Court to pay 50% of back wages for the intervening period is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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